

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

LEONARD FIRTH,  
Plaintiff,

VS.

DON MCGILL OF WEST  
HOUSTON, LTD. F/K/A  
DON MCGILL TOYOTA, INC.,  
Defendant.

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CIVIL ACTION NO. H-04-0659

JURY TRIAL DEMANDED

JUDGE DAVID HITTNER

**MOTION FOR ENTRY OF JUDGMENT, POST  
JUDGEMENT INTEREST, AND MOTION FOR AWARD  
OF ATTORNEYS' FEES AND TAXABLE COSTS**

**EXHIBIT B**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

LEONARD FIRTH,	§	
Plaintiff,	§	CIVIL ACTION NO. H-04-0659
	§	
VS.	§	
	§	JURY TRIAL DEMANDED
DON MCGILL OF WEST	§	
HOUSTON, LTD. F/K/A	§	
DON MCGILL TOYOTA, INC.,	§	JUDGE DAVID HITTNER
Defendant.	§	

**AFFIDAVIT OF JOSEPH Y. AHMAD**

1. My name is Joseph Y. Ahmad. I have personal knowledge of each and every fact contained in this affidavit and all such matters are true and correct. I am one of the lead attorneys on this case for the Plaintiff.

2. I have been licensed to practice law in the state of Texas since November, 1989. Prior to that I had been licensed to practice law in the state of Michigan since November, 1987. I graduated in June, 1987 from the University of Michigan Law School. I served as a law clerk for the Honorable Benjamin F. Gibson, United States District Judge for the Western District of Michigan. Prior to starting Ahmad & Zavitsanos, P.C., with John Zavitsanos in July 1993, I was associated with the firms of Miller, Bristow & Brown, and later Crain, Caton & James. I am a member of the Houston and American (Sections: Litigation; Labor and Employment Law) Bar Associations; State Bar of Texas (Sections: Labor; Litigation); College of the State Bar of Texas; Texas Trial Lawyers Association; The Association of Trial Lawyers of America; Houston Young Lawyers Association; and National Employment Lawyers Association.

3. Our firm concentrates its practice in the areas of labor and employment law. I am board certified by the Texas Board of Legal Specialization in labor and employment law. I was a regional officer with the Houston office of the National Employment Lawyers Association.

4. I have prepared the following written materials and made presentations at the following seminars that touch upon the issue of attorneys' fees in employment cases: *Strategies for Victory: Maximizing Your Client's Recovery in Employment Cases (Attorneys' Fees)* National Employment Lawyers Association, 2002 Thirteenth Annual Convention, Lake Buena Vista, Florida, June 26-29, 2002; *Litigating Wrongful Discharge Cases: Plaintiff's Perspective*, University of Houston Law Foundation Advanced Employment Law Seminar, March 31 - April 1, 2005 - Houston, April 7-8, 2005 - Dallas; *How to Organize and Manage Your Employment Law Practice* - Panelist, State Bar of Texas Continuing Legal Education, January 19, 2005, San Antonio, Texas; *What Plaintiff's Lawyers Look For in a Case*, Panelist, South Texas College of Law Continuing Legal Education, Employment and Labor Law Course, July 8-9, 2004, Houston, Texas; *Litigating Employment Cases: Plaintiff's Perspective*, Houston Management Lawyers' Foundation, Luncheon Presentation, January 22, 2004; *Litigating Wrongful Discharge Cases Part One: Plaintiff's Perspective*, University of Houston Law Foundation Advanced Employment Law, August 7-8, 2003 - Houston, August 21-22, 2003 - Dallas; *What Plaintiff's Lawyers Look For* - Panelist, South Texas College of Law Continuing Legal Education, Employment Law Course, July 10-11, 2003, Houston, Texas; and *Strategies and Techniques for Effective Cross Examination*, National Employment Lawyers Association, 2002 Thirteenth Annual Convention, Lake Buena Vista, Florida, June 26-29, 2002; *Trial of Employment Law Cases*, 2001 Texas/Louisiana Employment Lawyers Association, Fifth Circuit Seminar, Mexico City, Mexico, October 11 - 13, 2001; *Recent Developments in Employment Litigation*; Gulf Coast Symposium on Human Resources; March 22, 2000; and *Client Intake and Case Selection Procedure*, National Employment Lawyers Association Annual Convention, June 1998.

5. I have tried many employment law cases and received awards for attorneys' fees in those cases. In the last several years, I have tried the following employment law cases and been awarded attorneys' fees:

Civil Action No. H-02-0320; *Willie Champine v. Texas Department of Criminal Justice*; In the United States District Court for the Southern District of Texas, Houston Division (Awarded over \$160,000 in attorneys' fees for co-counsel and my firm).

Civil Action No. H-00-3307; *Susan Septimus v. The University of Houston and the University of Houston System*; In the United States District Court for the Southern District of Texas, Houston Division (Awarded over \$150,000 in attorneys' fees for co-counsel and my firm).

Civil Action No. H-98-1328; *Luis F. Mota v. University of Texas Houston Health Science Center*; In the U.S. District Court for the Southern District of Texas, Houston Division (Awarded over \$388,000 in attorneys' fees).

Civil Action No. SA-97-CA-1250; *Theresa M. Siler-Khodr v. University of Texas Health Science Center at San Antonio*; In the United States District Court for the Western District of Texas, San Antonio Division (Awarded over \$147,000 in attorneys' fees).

Civil Action No. H-96-1310; *O. Jayne Bowman v. Texas Woman's University*; In the United States District Court for the Southern District of Texas, Houston Division (Awarded over \$178,000 in attorneys' fees).

Civil Action No. H-93-441; *Kenneth Craig Brady, Guy "Nubbin" Chamblee, Bobby Lee Evans, John Fitzgerald Font, William Edward Fortenberry, James Arthur Leach, Stephen Leon Skinner and Antonio O. Rosas v. Fort Bend County*; In the United States District Court for the Southern District of Texas, Houston Division (Awarded over \$750,000 in attorneys' fees).

6. I have prepared the following written materials and presented at the following seminar discussing FMLA issues: *Developments in FMLA Compliance, Recent ADA Developments in Reasonable Accommodation, and Discussion of the Overlap of the ADA, FMLA and Worker's Compensation When Dealing With Absences of Ill, Injured, and Disabled Employees*, Sterling Education Services Seminar, Employment Law Update in Texas; What Human Resource Professionals and Their Legal Counsel Need to Know - NOW!; August 6, 2002, Houston.

7. I have prepared the following written materials and made presentations on other employment law matters at the following seminars: *Settlement Agreements - A Look at Negotiating and Defending Standard and Unstandard Provisions: Plaintiff's Perspective*, State Bar of Texas Labor and Employment Law Section, Can't We All Just Get Along? Resolving Disputes Without the Courthouse, November 4, 2005, Houston; *How to Take the Executive's Deposition*, State Bar of Texas, Labor and Employment Law Webcast Series, Panelist, October 26, 2005, Austin; *First Amendment Employment*, State Bar of Texas Continuing Legal Education, Suing and Defending Governmental Entities Course, July 28-29, 2005, San Antonio, Texas; *Discovery Issues in Employment Litigation*, Labor and Employment Law Seminar presented by the Labor and Employment Law Section of the Federal Bar Association, July 21-23, 2005, Rio Grande, Puerto Rico; *Managing Risk: Policies and Procedures* - Panelist, South Texas College of Law Employment Law Course, July 14-15, 2005, Houston, Texas; *Sexual Harassment*, University of Houston Law Foundation Advanced Employment Law Seminar, August 19-20, 2004 - Dallas, August 26-27, 2004 - Houston; *Law Enforcement Liability*, State Bar of Texas Continuing Legal Education, Suing and Defending Governmental Entities, July 22-23, 2004, Galveston, Texas; *Storytelling!*, Panelist, South Texas College of Law Continuing Legal Education, Employment and Labor Law Course, July 8-9, 2004, Houston, Texas; *Mediation Just Makes Sense*, Panelist, Equal Employment Opportunity Commission, Houston District Office, Technical Assistance Program Seminar, May 18, 2004 - Houston; *Employment Law Update*, University of Houston Law Foundation Advanced Personal Injury and Insurance Law, April 1-2, 2004 - Dallas; April 15-16, 2004 - Houston; *Sarbanes-Oxley*, State Bar of Texas Continuing Legal Education, Advanced



Employment Law Course, January 22-23, 2004, San Antonio; *Voir Dire*, State Bar of Texas, Employment Law Section, Fall Practice Skills Seminar in Labor and Employment Law, Litigation Skills II: Prosecution and Defense of Employment Cases at Trial, November 21, 2003 - Houston; *Labor and Employment Law Update*, State Bar of Texas Continuing Legal Education, 26th Annual Advanced Civil Trial Course, November 5-7, 2003 - Houston; *Employment Law Aspects of The Sarbanes-Oxley Corporate Responsibility Statute*, Texas Employment Lawyers Association Annual Meeting, October 9-12, 2003; *Employment Law Aspects of the Sarbanes-Oxley Corporate Responsibility Statute*, University of Houston Law Foundation Employment Law Seminar, March 27-28, 2003 - Houston, April 3-4, 2003 - Dallas; *ADA: What is Left of it*, The University of Texas School of Law, 18th Annual School Law Conference, February 27-28, 2003, Austin, Texas; *Sarbanes/Oxley*, State Bar of Texas Continuing Legal Education, Advanced Employment Law Course 2003, February 20 - 21, 2003, Houston, with Bill Bux and Richard Carlson; *Removal and Remand*, South Texas College of Law Continuing Legal Education, Advanced Civil Trial Law Conference, Feb. 20-21, 2003, Houston, Texas; *Employment Law*, State Bar of Texas Continuing Legal Education, Advanced Civil Trial Course 2002, August 28-30, 2002 - Dallas, October 9-11, 2002 - Houston; *Advising the Departing Employee*, University of Houston Law Foundation Advanced Employment Law Seminar, July 25-26, 2002 - Houston, August 1-2, 2002 - Dallas; *Preparing the Witness*, South Texas College of Law, Labor and Employment Law Course, Houston, Texas, July 11-12, 2002, with Dr. Bob Gordon and Dale Jefferson; *Strategies and Techniques for Effective Cross Examination*, National Employment Lawyers Association, 2002 Thirteenth Annual Convention, Lake Buena Vista, Florida, June 26-29, 2002; *Strategies for Handling the Limelight After Your Employee Files a Lawsuit Against You*; S.J. Bashen Corporation Seminar - Best Employment Practices During Uncertain Times: A Fair Employment Practices Seminar; February 22, 2002; with Wooty Sixel of the Houston Chronicle; *Sexual Harassment in the Workplace: Including Conducting Investigations and Litigation Developments*, University of Houston Law Foundation Employment Law Seminar, February 2002; *Sexual Harassment*, Asian American Bar Association of Houston, monthly meeting, February 20, 2002; *Americas*

*with Disabilities Act Update*, State Bar of Texas, 10th Annual Advanced Employment Law Course 2002, Houston, Texas, January 25, 2002; *Privacy Issues in the Workplace*, University of Houston Law Foundation, Advanced Employment Law Seminar, July/August 2000, August 2001; *Discrimination Update*, University of Texas School of Law, Labor and Employment Law Seminar, 8th Annual Conference, May 3-4, 2001; *Sexual Harassment Claims - Plaintiff's Perspective*, University of Houston Law Foundation Employment Law Seminar, February 1999, February 2000 and February 2001; *Employment Discrimination Class Actions After Allison V. Citgo Petroleum Corp.*; State Bar of Texas, Advanced Employment Law Court 2000; February 1, 2001; *Training Managers to Avoid Liability - Winning Strategies for Ensuring Compliance with Your Company Policy and the Law*, Council on Education in Management Discipline & Termination Law Seminar, February 1999; *Jury Selection and Voir Dire, Including Batson Challenges*, National Employment Lawyers Association, Houston Chapter, Employment Law Seminar, December 1998, with Andrew S. Golub; *Title VII/ADEA Update*, State Bar of Texas Annual Labor and Employment Law Update Seminar, March 1997; and *Mental Anguish in Employment Cases*, South Texas College of Law's Employment Law Seminar, April 1997.

8. The other lead attorney on this case for the Plaintiff was Howard Dulmage. Mr. Dulmage is filing his own affidavit. I have, however, reviewed his affidavit and time spend and find it reasonable and customary for a lawyer of his skill and experience in Harris County, Texas.

9. The other name that appears on our fee printout is Gigi Cox. Gigi Cox was a legal assistant on this case. Ms. Cox graduated from Austin College in 1982 with a B.A. degree in Psychology. She has been with Ahmad, Zavitsanos & Anaipakos, P.C. since April of 2000. Ms. Cox is primarily assigned to work with me on my cases. She did an excellent job on this case. She is extremely intelligent and has outstanding judgment and organizational skills. Because of Ms. Cox's skills, she performed many tasks on this case that would have otherwise been performed by an attorney, thus further reducing our fee in this matter. In my opinion, her hourly rate of \$125 per hour is below what other legal

assistants charge of her caliber in Harris County. It is certainly, at least, reasonable and customary for Harris County.

10. I have tried over 50 cases to a verdict, many in the area of labor and employment law. In the last several years, I have tried ten cases to a verdict in the area of employment law. A listing of my employment trial experience over the last five years (excluding this case) is set forth below:

Civil Action No. H-02-0320; *Willie Champine v. Texas Department of Criminal Justice*; In the United States District Court for the Southern District of Texas, Houston Division (Hostile Work Environment)

Civil Action No. H-00-3307; *Susan Septimus v. The University of Houston and the University of Houston System*; In the United States District Court for the Southern District of Texas, Houston Division (Retaliation for complaining of sex discrimination)

Civil Action No. H-00-3159; *Janet King v. Anesthesia Specialists of Houston, a Partnership*; In the United States District Court for the Southern District of Texas, Houston Division (Disability Discrimination)

Cause No. 99-15281; *Robert J. Horn v. ClearWorks Technologies, Inc. and Michael T. McClere*; In the 333<sup>rd</sup> Judicial District Court of Harris County, Texas.

Civil Action No. H-98-3587; *Willie E. Pratt and Bernard Garrett v. City of Houston, Texas*; In the United States District Court for the Southern District of Texas, Houston Division (Race Discrimination)

Civil Action No. H-98-1328; *Luis F. Mota v. University of Texas Houston Health Science Center*; In the U.S. District Court for the Southern District of Texas, Houston Division



Civil Action No. H-98-3035; *Louella (Henderson) Jones and Herbert Williams, III v. City of Houston, Texas*; In the United States District Court for the Southern District of Texas, Houston Division (tried twice because of hung jury)

Civil Action No. SA-97-CA-1250; *Theresa M. Siler-Khodr v. University of Texas Health Science Center at San Antonio*; In the United States District Court for the Western District of Texas, San Antonio Division

Civil Action No. H-96-1310; *O. Jayne Bowman v. Texas Woman's University*; In the United States District Court for the Southern District of Texas, Houston Division

Cause No. 94-049371; *Buddy F. Moore v. Exxon Corporation d/b/a Exxon Company, U.S.A.*, In the 281st Judicial District Court of Harris County, Texas

Civil Action No. H-97-1515; *Roosevelt Collins v. Smith International, Inc. d/b/a/ Delaware Holding Smith International, Inc.*; In the United States District Court for the Southern District of Texas, Houston Division

Civil Action No. H-96-783; *David C. Garcia v. City of Houston*; In the United States District Court for the Southern District of Texas, Houston Division

No. 70-116-00085-97; *Joseph Heller v. Charter Communications International, Inc.*; Proceeding Before the American Arbitration Association/No. 96-63065; *Joseph Heller v. Charter Communications International, Inc.*; In the 295th Judicial District Court of Harris County, Texas

Cause No. 95-25172; *Danna F. Lynde v. J. W. English Management Co., Inc. and John Wesley English*; In the 215<sup>th</sup> Judicial District Court of Harris County, Texas

Civil Action No. H-93-441; *Kenneth Craig Brady, Guy "Nubbin" Chamblee, Bobby Lee Evans, John Fitzgerald Font, William Edward Fortenberry, James Arthur Leach, Stephen Leon Skinner and Antonio O. Rosas v. Fort Bend County*; In the United States District Court for the Southern District of Texas, Houston Division

Cause No. 94-34177; *Joanna Temple v. R.L.G. Holdings, Ltd., Haysim Rihawi and William Scogin*; In the 270<sup>th</sup> Judicial District Court of Harris County, Texas

11. I have also tried three arbitrations in the area of employment law:

No. 70 160 00325 01; *Sandra Bias v. Western Container Corporation*; Before the American Arbitration Association (Sex Discrimination).

Case No. 70-160-00136-00; *In the Matter of the Arbitration between John Getter v. KHOU-TV and Belo Corporation*; American Arbitration Association (Age Discrimination)

AAA No. 70-M-160 00513-99; *In the Matter of: Jaime N. Lucio v. Temple-Inland, Inc., Inland Paperboard and Packaging, Inc.*; American Arbitration Association

No. 70-116-00085-97; *Joseph Heller v. Charter Communications International, Inc.*; Proceeding Before the American Arbitration Association.

12. I have also opined in other cases that \$355 to \$375 per hour is a reasonable billing rate for attorneys fees in employment claims.

13. I have reviewed the factors set forth by the Fifth Circuit in *Johnson v. Georgia Highway Express*, 488 F.2d 714 (5th Cir. 1974), and the information for each of the factors set forth in that case are as follows:

(1) **Time and Labor Involved**

As the attached printout indicates, the total time spent by me on this matter for which the Firm is seeking a fee award is 221.75 hours. In actuality, this time spent by me on this case exceeds 240 hours. However, under the "billing judgment rule" I have deleted some of that time that I have judged was duplicative, unnecessary, or otherwise would not be billed to one of my client paying on an hourly basis. This time, which I have voluntarily excluded, is listed by the amount of time spent, and the hourly rate, but assigned a value of "0.00" in our printout. The "0.00" is reflected under the "Amount DNB Amt" column of the printout.

For example, while Scott Cook was working on this case, I have deleted the vast majority of work I performed on the file, including conference with Mr. Cook, and reviewing correspondence and pleadings. I have also deleted all of the time for Mr. Zavitsanos and Nasim Ahmad. Therefore, even though the defendant appeared with three lawyers at trial, Firth is only asking for compensation for two of the three lawyers who appeared for him at trial. Although some of this time could be deemed compensable, in an effort to avoid any time that might be considered duplicative, it has been voluntarily excluded.

All of the time included within the 221.75 hours spent by me on this matter was necessary in order to prosecute this matter and none of it was duplicative or spent generally familiarizing myself with this case. In light of the numerous issues present in this litigation, as well as the numerous witnesses and documents produced by the parties, I believe that the number of hours was extremely conservative. For example, this litigation involved the depositions of various present and former employees of Defendant whose testimony I have to become familiar with within a short period of time.

Moreover, this case presented several novel issues of law. For example, this case was unique in that, this involved several issues relating to compensable time under the FMLA, and therefore, the FLSA, for which there is very little case law. Therefore, this case was hardly the

typical case brought under the FMLA and this case was hardly simple or rote.

My involvement in the case was primarily limited to the early pretrial stages, depositions, trial, responding to Defendant's dispositive motions, and trial preparation. Given the legal complexity of the case, and my involvement in the case prior to trial, my participation at trial was both reasonable and necessary to its successful prosecution. Moreover, the time spent on this matter by Ms. Cox was conservative, reasonable, and necessary. Ms. Cox spent 148.9 hours on this case for which our Firm seeks a fee of \$18,612.50. Allowing Ms. Cox to handle tasks typically handled by an attorney also resulted in a lower than usual fee. In summary, the total fee sought by our Firm is \$130,514.24.

(2) **The Novelty and Difficulty of the Questions**

The questions here were very novel. As mentioned above, this involved issues of compensable in time under the FMLA and FLSA. Even under the FLSA, these were novel questions, and recently the subject of a recent United States Supreme Court case. However, the applicability of this law to the FMLA, along with its unique burdens of proof, and the fact that the FMLA is a recent statute make these questions novel and difficult. Moreover, since the FMLA, is a relatively new statute, these questions were by definition novel.

(3) **The Skill Requisite to Perform the Legal Services Properly**

Because of the barrage of factual allegations raised by the Defendant in this case, as well as their numerous novel legal theories, I believe that a better than average skill level was required to perform the work on behalf of Plaintiff in this case. I believe that Mr. Dulmage, Ms. Cox, and I demonstrated the skill level commensurate with that required to perform the legal services properly in this case. Obviously, I was familiar with Mr. Dulmage's work in this case because I worked very

closely with her on this case. His expertise was necessary because he is a pilot and therefore I assigned him the task of examining two of the three pilots in the case. First, to cross-examine Michael Rees in the event Rees (who had not been previously deposed) testified to any issues that required aviation expertise (which, as it turned out, it did), and to examine Firth in a manner that explain the duties and responsibilities of a pilot clearly to the jury.

(4) **The Preclusion of Other Employment by the Attorney Due to This Case**

This case required my full-time efforts for nearly a week and a half in preparation for trial and trial. Our Firm generally represents both clients on the who pay an hourly rate, and those who pay on a contingency fee basis. Because of the time spent by me on trial preparation, trial, as well as time spent by me working on the Joint Pretrial Order, and responding to Defendant's dispositive motion, I was required to be absent, and was foreclosed from working on additional matters, as well as spending time on Plaintiffs' cases that needed work. In particular, one of my clients had a Temporary Restraining Order filed against him, which led to a preliminary injunction hearing which was initially scheduled the day before trial in this case was to start. While I was able to get the hearing rescheduled, I had to have obtain the assistance of other attorneys (from other firms) during trial to attend to the matters I could not get to.

(5) **The Customary Fee**

The amount charged on this file for myself is \$355.00 per hour. This amount is within our customary fee. Typically, I our firm charges between \$355.00 and \$375.00 per hour for work of this type. Right now, my hourly rate for work is at \$375.00 per hour.



I have received on numerous instances fees awarded by both state and federal courts in employment cases. It is reasonable and customary for my rate to increase over time. Given that my last rate approved by this court for work performed two years ago was \$315.00 per hour, a 2006 rate of \$355.00 hour is reasonable and customary. My latest hourly rates approved by this court are as follows:

In 2004, in a race discrimination and hostile work environment retaliation case, *Willie Champine v. Texas Department of Criminal Justice*, C.A. No. H-02-0320; In the United States District Court for the Southern District of Texas, Houston Division, I was awarded an hourly rate of \$315.00. In 2003, in a retaliation case, *Susan Septimus v. The University of Houston, et al.*, C.A. No. H-00-3307; In the United States District Court for the Southern District of Texas, Houston Division, I was awarded an hourly rate of \$285.00. *Janet C. King v. Anesthesia Specialists of Houston*, C.A. No. H-00-3159; In the United States District Court for the Southern District of Texas, Houston Division, I was awarded an hourly rate of \$275.00. In 1999, in a same-sex sexual harassment case, *Luis F. Mota v. University of Texas Health Science Center*; Cause No. H-98-1328; In the United States District Court for the Southern District of Texas, Houston Division, I was awarded an hourly rate of \$245.00. Also, in an ADA and retaliation case, *O. Jayne Bowman v. Texas Woman's University*; Cause No. H-96-1310, I was awarded an hourly rate of \$245.00 by Magistrate Judge Calvin Botley. Additionally, in a recent national origin and race discrimination case, *David Garcia v. City of Houston*; Cause No. H-96-783; In the United States District Court for the Southern District of Texas, Houston Division, I was awarded an hourly rate of \$235.00 by Judge Nancy F. Atlas. Also, on September 17, 1998, I was awarded an hourly rate of \$235.00 by Judge Sim Lake in Cause No. H-97-1515; *Roosevelt Collins v. Smith International, Inc. d/b/a/ Delaware Holding Smith International, Inc.*; In the United States District Court for the Southern District of Texas,

Houston Division. In a case under the Americans with Disabilities Act in state court, I was awarded by Judge Jane Bland, \$205.00 per hour in a Judgment in September 1998 as a fee award for my successful work for the Plaintiff in that case styled *Buddy F. Moore v. Exxon Corporation d/b/a Exxon Company, U.S.A.*, Case No. 94-049371; In the 281st Judicial District Court of Harris County, Texas.

I am familiar with the typical reasonable hourly fees charged by lawyers practicing in the labor and employment field in Houston (particularly since I was an officer with the Houston office of the National Employment Lawyers Association), and it is my opinion that \$355.00 is a customary fee for this type of work for a specialist in the labor and employment field in Houston, Texas in 2006. Additionally, Gigi Cox's hourly rate of \$125 per hour, as are the rates of the other legal assistants and clerks, is very reasonable and necessary for someone of her experience and skill level in Harris County, Texas.

(6) **Whether the Fee is Fixed or Contingent**

Ahmad, Zavitsanos & Anaipakos, P.C. agreed to handle this matter for the Plaintiff on a rather unusual contingency basis. I agreed to be paid whatever the Court awards as fees. In the event that we lost, I would not be paid at all. I essentially agreed to an hourly rate that would be paid only if we won, and only upon Court approval. I know of few lawyers, that would represent a client on this basis. I am familiar with Fifth Circuit authority which holds that "Lawyers who are to be compensated only in the event of victory expect and are entitled to be paid more when successful from those who are assured of compensation, regardless of result." *Jones v. Diamond*, 636 F.2d 1364, 1382 (5th Cir. 1981) (*en banc*). I have not, however, asked for an enhancement due this firm's contingency fee.

(7) **Time Limitations**

There have been obvious time limitations imposed by this case. During this recent trial and for several days prior to trial, I was required to drop all other matters while I prepared for trial and tried this case. It took a tremendous effort on the part of Howard Dulmage and myself to prepare for the examination of the witnesses and to successfully present this matter at trial.

(8) **The Amount Involved and Results Obtained**

The factual nature of this case and the legal theories advanced made this a difficult and challenging case. As discussed previously, very few similar cases have been tried to verdict. This action was obviously vigorously defended by the defendant. We obtained favorable findings on both liability questions, and obtained the majority of what we asked for in damages despite issues of mitigation. Accordingly, the result obtained was highly successful and extremely favorable for the Plaintiff.

The Fifth Circuit and the Supreme Court have emphasized the importance of the result obtained in setting attorneys' fees. *See Farrar v. Hobby*, 113 S.Ct. 566 (1992). In this case, it is difficult to imagine, on facts of this case, a much better result.

Moreover, it was necessary to try the case in order to get this award as no settlement offer approaching this amount was made by the Defendant. Indeed, although the Plaintiff made a demand early in the case for \$175,000, which he certainly would have been willing to compromise to some degree upon a offer from the Defendant, the Defendant never responded with any offer whatsoever. Accordingly, not only was the result achieved the best that could have been achieved, it was certainly necessary to go to Court in order to achieve that result since the Defendant nothing to settle this case.

In fact, given the result and given the fact that this case was taken on an hourly, but contingency, basis, this is one of those rare cases in which a multiplier for an additional amount of 20-30% would be in order. We are not asking for such a multiplier however.

(9) **The Experience, Reputation, and Ability of Counsel**

These matters have been addressed previously above.

(10) **The Undesirability of the Case**

This case was very time consuming during its preparation and during trial. It involved the deposition of a large number of witnesses, as well as locating and contacting various third-party witnesses. I do not believe there are many lawyers who would agree to accept a case such as this one on a pure contingency basis.

(11) **The Nature and Length of the Professional Relationship With the Clients**

Despite the short time this firm was involved in this matter, our Firm was able to develop a close working relationship with Mr. Firth. He has been an excellent client and was always available for questions. While I do not know how much time Mr. Firth devoted to this case, I do know that he was present before and after trial each day to provide any assistance that was needed.

(12) **Awards in Similar Cases**

The fee award requested is comparable to similar cases that I have obtained. I have received for example the following fee awards:

Civil Action No. H-02-0320; *Willie Champine v. Texas Department of Criminal Justice*; In the United States District Court for the Southern District of Texas, Houston Division (Awarded over \$160,000 in attorneys' fees for co-counsel and my firm).

Civil Action No. H-00-3307; *Susan Septimus v. The University of Houston and the University of Houston System*; In the United States District Court for the Southern District of Texas, Houston Division (Awarded over \$150,000 in attorneys' fees for co-counsel and my firm).

Civil Action No. H-98-1328; *Luis F. Mota v. University of Texas Houston Health Science Center*; In the U.S. District Court for the Southern District of Texas, Houston Division (Awarded over \$388,000 in attorneys' fees).

Civil Action No. SA-97-CA-1250; *Theresa M. Siler-Khodr v. University of Texas Health Science Center at San Antonio*; In the United States District Court for the Western District of Texas, San Antonio Division (Awarded over \$147,000 in attorneys' fees).


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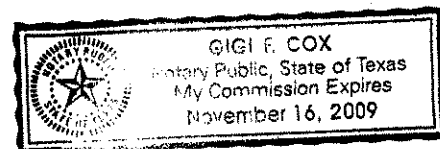


14. In my opinion, a reasonable and necessary fee for any appeal in this case would be \$50,000.00. Because of the potentially extensive issues raised by the Defendant in this case, I anticipate that significant work will be necessary on appeal. This trial lasted nearly a week. In the event that the Defendant raises any sufficiency of the evidence appellate points, it will be necessary to review the entire record in order to adequately represent the Plaintiff on the appeal. In the event the Fifth Circuit affirms the judgment of this Court, but grants an application for rehearing *en banc*, I anticipate that a reasonable and necessary fee for responding to such an application will be \$15,000.00. In my opinion, I also believe that a reasonable and necessary fee for an application for writ of certiorari to the United States Supreme Court would be \$15,000.00, and, if the Supreme Court grants the writ, an additional \$15,000.00 for briefing to the Supreme Court.

Further Affiant sayeth not.

  
\_\_\_\_\_  
Joseph Y. Ahmad

SUBSCRIBED AND SWORN TO BEFORE ME on this 30th day of January, 2006.

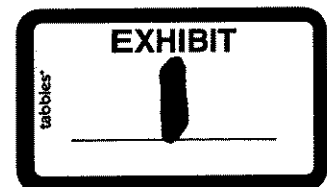
  
\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

1/30/2006  
9:35 AMAHMAD, ZAVITSANOS & ANAIPAKOS, P.C.  
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Nickname FIR002 | 2028  
 Full Name Leonard Firth  
 Address P.O. Box 1418  
 Brookshire TX 77423  
 Phone 1 (281) 574-2507 Phone 2  
 Phone 3 Phone 4  
 In Ref To Leonard Firth v. Don McGill Toyota  
 Our File No. FIR002  
 Fees Arrg. By billing value on each slip  
 Expense Arrg. By billing value on each slip  
 Tax Profile Exempt  
 Last bill  
 Last charge 1/25/2006  
 Last payment Amount \$0.00

Date ID	Attorney Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
<u>Attorney: Ahmad, Joseph</u>					
2/9/2004 182654	Ahmad, Joseph Legal Draft and revise Plaintiff's Complaint.	355.00	2.50	887.50	Billable
2/17/2004 182655	Ahmad, Joseph Legal Telephone conference with Leonard Firth. Revise and finalize Complaint.	355.00	0.50	177.50	Billable
2/21/2004 182656	Ahmad, Joseph Legal Receipt and review of assignment to Judge Werling. Review of materials including court rules from Judge Werling.	355.00	0.30	106.50	Billable
5/5/2004 182657	Ahmad, Joseph Legal Receipt and review of Defendant's Original Answer. Compare to allegations in Plaintiff's Complaint. Review of Defendant's Motion to Strike and Motion to Dismiss.	355.00	1.00	355.00	Billable
5/20/2004 182658	Ahmad, Joseph Legal Attention to filing First Amended Complaint and well as Response to Motion to Strike and Motion to Dismiss.	355.00	0.30	106.50	Billable
6/1/2004 182659	Ahmad, Joseph Legal Receipt and review of of Order Granting Leave to File First Amended Complaint.	355.00	0.10	35.50	Billable
6/7/2004 182661	Ahmad, Joseph Legal Attention to drafting Joint Discovery Case Management Plan.	355.00	0.40	142.00	Billable
6/10/2004 182660	Ahmad, Joseph Legal Receipt and review of Defendant's Amended Answer.	355.00	0.30	106.50	Billable



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FIR002:Leonard Firth (continued)

Date ID	Attorney Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
6/20/2004 182662	Ahmad, Joseph Legal Attention to review of Scheduling Order.	355.00	0.20	71.00	Billable
8/2/2004 182663	Ahmad, Joseph Legal Receipt and review of Defendant's Initial Disclosures.	355.00	0.30	106.50	Billable
8/10/2004 182664	Ahmad, Joseph Legal Attention to drafting and preparing Plaintiff's Initial Disclosures.	355.00	0.50	177.50	Billable
8/31/2004 182665	Ahmad, Joseph Legal Receipt and review of of Defendant's Requests for Production and Interrogatories to Plaintiff.	355.00	0.40	142.00	Billable
9/30/2004 182666	Ahmad, Joseph Legal Meeting with Scott Cook and Leonard Firth regarding preparation for deposition.	355.00	2.50	887.50	Billable
9/30/2004 182868	Ahmad, Joseph Legal Meet with S. Cook about deposition of Firth	0.00	0.80	0.00	Billable
10/1/2004 182667	Ahmad, Joseph Legal Meeting with L. Firth before and during deposition. Attend portion of deposition of L. Firth. Meeting with Leonard Firth after deposition.	355.00	2.00	710.00	Billable
11/1/2004 182869	Ahmad, Joseph Legal Conference with S. Cook about depositions of McGill and Pickett.	0.00	0.10	0.00	Billable
11/2/2004 182870	Ahmad, Joseph Legal Conference with S. Cook about discovery.	0.00	0.10	0.00	Billable
11/3/2004 182668	Ahmad, Joseph Legal Review of documents provided by Plaintiff and Defendants in discovery. Preparation for depositions of Don McGill and Julie Pickett.	355.00	8.50	3,017.50	Billable
11/4/2004 182669	Ahmad, Joseph Legal Preparation for and attend depositions of Don McGill and Julie Pickett.	355.00	7.50	2,662.50	Billable
11/8/2004 182871	Ahmad, Joseph Legal Conference with S. Cook about declarations of Aaron Johnson and Michael Rees.	0.00	0.50	0.00	Billable

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FIR002:Leonard Firth (continued)

Date ID	Attorney Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
11/9/2004 182872	Ahmad, Joseph Legal Conference with S. Cook about declarations.	0.00	0.20	0.00	Billable
11/10/2004 182873	Ahmad, Joseph Legal Conference with S. Cook about declarations.	0.00	0.10	0.00	Billable
11/15/2004 182874	Ahmad, Joseph Legal Conference with S. Cook about Johnson declaration.	0.00	0.10	0.00	Billable
12/2/2004 182875	Ahmad, Joseph Legal Conference with S. Cook about medical records.	0.00	0.20	0.00	Billable
12/16/2004 182876	Ahmad, Joseph Legal Conference with S. Cook about confidentiality agreement.	0.00	0.30	0.00	Billable
12/16/2004 182878	Ahmad, Joseph Legal	0.00	0.00	0.00	Billable
1/31/2005 182673	Ahmad, Joseph Legal Review and file Plaintiff's Expert Witness Designation.	355.00	0.40	142.00	Billable
2/23/2005 182877	Ahmad, Joseph Legal Conference with S. Cook about case status.	0.00	0.20	0.00	Billable
3/29/2005 182879	Ahmad, Joseph Legal Conference with S. Cook about discovery production.	0.00	0.40	0.00	Billable
4/8/2005 182880	Ahmad, Joseph Legal Conference with S. Cook about experts.	0.00	0.20	0.00	Billable
4/8/2005 182881	Ahmad, Joseph Legal	355.00	0.00	0.00	Billable
4/25/2005 182882	Ahmad, Joseph Legal Conference with S. Cook about deposition of Aaron Johnson.	0.00	0.10	0.00	Billable
7/25/2005 182670	Ahmad, Joseph Legal Review Defendant's Motion for Summary Judgment. Review draft Response to Motion for Summary Judgment. Conference with Scott Cook concerning the response.	355.00	4.00	1,420.00	Billable

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FIR002:Leonard Firth (continued)

Date ID	Attorney Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
7/29/2005 182671	Ahmad, Joseph Legal Review finalized Response to Motion for Summary Judgment.	355.00	1.00	355.00	Billable
8/11/2005 182672	Ahmad, Joseph Legal Review reply to Defendant's Reply to Summary Judgment Response.	355.00	0.50	177.50	Billable
8/15/2005 182883	Ahmad, Joseph Legal Conference with S. Cook about Defendant's reply and Plaintiff's sur-reply to Motion for Summary Judgment.	0.00	0.50	0.00	Billable
11/16/2005 182674	Ahmad, Joseph Legal Review latest caselaw and regulations concerning compensable time as well as FMLA. Draft provisions of Joint Pretrial Order.	355.00	4.50	1,597.50	Billable
11/18/2005 182675	Ahmad, Joseph Legal Finalize Joint Pretrial Order, prepare Witness List, Voir Dire, Motion in Limine, and Exhibit List as well as finalize Jury Charge.	355.00	9.50	3,372.50	Billable
11/29/2005 182676	Ahmad, Joseph Legal Preparation for and attend mediation with Doug Sandage.	355.00	9.00	3,195.00	Billable
1/7/2006 182677	Ahmad, Joseph Legal Review Joint Pretrial Order, review exhibits to pretrial order and Jury Charge. Review and outline deposition of Don McGill. Attention to subpoenaing witnesses.	355.00	11.50	4,082.50	Billable
1/8/2006 182678	Ahmad, Joseph Legal Review deposition of Julie Pickett and outline deposition. Attention to contacting witnesses and securing Aaron Johnson for trial. Telephone conference with L. Firth.	355.00	9.50	3,372.50	Billable
1/9/2006 182679	Ahmad, Joseph Legal Meeting with L. Firth. Review deposition of L. Firth and outline deposition.	355.00	12.50	4,437.50	Billable
1/10/2006 182680	Ahmad, Joseph Legal Prepare outline of subject matter of topics to be reviewed with L. Firth on direct examination. Prepare opening and Voir Dire. Prepare exhibits for examination of L. Firth. Meeting with L. Firth.	355.00	13.50	4,792.50	Billable
1/11/2006 182692	Ahmad, Joseph Legal Review of recent Supreme Court authority on compensable hours as well as cases following Alvarez and on continuing work rule in general and portal to portal act. Attention to pretrial conference. Review Defendant's exhibits. File Supplemental Motion in Limine. Continue preparation of opening and organization of exhibits. Prepare cross examination of McGill and Julie Pickett. Prepare Voir Dire.	355.00	14.50	5,147.50	Billable



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FIR002:Leonard Firth (continued)

Date ID	Attorney Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
1/11/2006 182681	Ahmad, Joseph Legal	355.00	0.00	0.00	Billable
1/12/2006 182682	Ahmad, Joseph Legal Preparation for and attendance at trial. Conduct voir dire, opening statement, and cross-examination of Don McGill and Julie Pickett. Revise cross examinations of McGill and Pickett. Continue preparation of L. Firth for direct and cross-examination.	355.00	14.00	4,970.00	Billable
1/13/2006 182683	Ahmad, Joseph Legal Prepare for and attend trial. Meeting with L. Firth. Telephone conference with Aaron Johnson and Daryl Stewart. Meeting with Aaron Johnson. Conduct examination of A. Johnson and D. Stewart.	355.00	14.00	4,970.00	Billable
1/14/2006 182684	Ahmad, Joseph Legal Meeting with Howard Dulmedge and L. Firth. Continued preparation for trial. Help prepare L. Firth for examination. Draft supplemental jury instructions, and research on "Continuing Violation Rule."	355.00	11.00	3,905.00	Billable
1/14/2006 182685	Ahmad, Joseph Legal Continue research on violation rule, burden shifting under the FMLA and liquidated damages. Attention to closing argument.	355.00	7.50	2,662.50	Billable
1/16/2006 182686	Ahmad, Joseph Legal Meeting with H. Dulmage and L. Firth. Continue preparation for trial and examination of L. Firth as well as possible recall of D. McGill and M. Reese.	355.00	10.50	3,727.50	Billable
1/17/2006 182687	Ahmad, Joseph Legal Preparation for and attend trial. Continued work on Jury Charge.	355.00	12.00	4,260.00	Billable
1/18/2006 182688	Ahmad, Joseph Legal Preparation for and attend charge conference. Prepare closing argument.	355.00	12.50	4,437.50	Billable
1/19/2006 182689	Ahmad, Joseph Legal Preparation for and attend trial. Conduct closing argument and wait for a jury.	355.00	8.00	2,840.00	Billable
1/20/2006 182690	Ahmad, Joseph Legal Wait for jury verdict.	355.00	4.00	1,420.00	Billable
1/25/2006 182691	Ahmad, Joseph Legal Attention to fee _____, and preparation of judgment including claim for liquidated damages, front pay, interest and reinstatement.	355.00	6.50	2,307.50	Billable

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FIR002:Leonard Firth (continued)

Date ID	Attorney Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
Total: Ahmad, Joseph			221.50		\$77,283.50
<u>Attorney: Ahmad, Nasim</u>					
1/12/2006	Ahmad, Nasim 182865 Legal	0.00	1.40	0.00	Billable
Research case law under the portal to portal act in preparation for drafting additional instructions for plaintiff's proposed jury charge. Conference with Joseph Ahmad regarding research.					
1/13/2006	Ahmad, Nasim 182866 Legal	0.00	2.80	0.00	Billable
Conference with Joseph Ahmad regarding additional instructions to be added to plaintiff's proposed jury charge. Drafted additional jury instructions for plaintiff's proposed jury instructions. Revisions to plaintiff's proposed jury charge.					
<u>Attorney: Burcham, Tiffany</u>					
5/26/2004	Burcham, Tiffany 148389 Legal	90.00	0.20	18.00	Billable
Meet with Joseph Ahmad regarding meeting with client. Telephone call to client regarding meeting and current work status.					
Total: Burcham, Tiffany			0.20		\$18.00
<u>Attorney: Cook, Scott</u>					
9/27/2004	Cook, Scott 157083 Legal	185.00	1.00	185.00	Billable
Work on supplementing Interrogatory responses. Telephone conference to L. Firth regarding Interrogatories and background fo case. Review pleadings and case materials.					
9/28/2004	Cook, Scott 157086 Legal	185.00	6.80	1,258.00	Billable
Review general background of case and all documents produced to Defendant. Preparing and supplementing Plaintiff's responses to Interrogatories. Preparing Plaintiff's responses to Defendant's Interrogatories. Telephone conference with L. Firth about background of case and answering Defendant's Interrogatories.					
9/29/2004	Cook, Scott 157095 Legal	185.00	2.00	370.00	Billable
Meeting with client. Preparation of responses to Interrogatories and initial preparation for deposition.					
9/30/2004	Cook, Scott 157096 Legal	185.00	3.70	684.50	Billable
Discussed deposition strategy with Joseph Ahmad. Meeting with L. Firth regarding preparation for depositions and supplementation of discovery responses. Review documents to supplement Defendant's Requests for Production. Preparation for deposition.					
10/1/2004	Cook, Scott 159694 Legal	185.00	8.10	1,498.50	Billable
Preparation and attend deposition of Leonard Firth.					

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FIR002:Leonard Firth (continued)

Date ID	Attorney Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
10/4/2004 159711	Cook, Scott Legal Phone call to Leonard Firth regarding supplemental discovery and deposition.	185.00	0.50	92.50	Billable
10/11/2004 159722	Cook, Scott Legal Returned phone call to opposing counsel. Organized and reviewed discovery.	185.00	1.00	185.00	Billable
10/18/2004 159748	Cook, Scott Legal Telephone conference to Leonard Firth about his health.	185.00	0.30	55.50	Billable
10/29/2004 159790	Cook, Scott Legal Telephone conference to Leonard Firth regarding medical records and depositions next week.	185.00	0.80	148.00	Billable
11/1/2004 161907	Cook, Scott Legal Conference with Joseph Ahmad regarding deposition on Thursday.	185.00	0.10	18.50	Billable
11/2/2004 161915	Cook, Scott Legal Telephone conference to Leonard Firth about case. Conference with Joseph Ahmad about discovery. Telephone conference to J. Schein about discovery.	185.00	0.20	37.00	Billable
11/3/2004 161919	Cook, Scott Legal Deposition preparation for Don McGill and Julie Pickett.	185.00	4.90	906.50	Billable
11/4/2004 161925	Cook, Scott Legal Deposition preparation. Deposition of Don McGill and Julie Pickett. Conference with G. Cox regarding requests for medical records.	185.00	6.90	1,276.50	Billable
11/8/2004 161935	Cook, Scott Legal Conference with Joseph Ahmad regarding declarations of Aaron Johnson and Michael Keas.	185.00	0.50	92.50	Billable
11/9/2004 161940	Cook, Scott Legal Telephone conference to Michael Rpss regarding possible declaration. Conference with Joseph Ahmad regarding declarations. Telephone conference to Aaron Johnson regarding possible declaration.	185.00	0.60	111.00	Billable
11/10/2004 161943	Cook, Scott Legal Telephone conference to Aaron Johnson regarding declaration. Conference with Joseph Ahmad regarding declarations.	185.00	0.20	37.00	Billable
11/12/2004 161958	Cook, Scott Legal Drafting declaration for Aaron Johnson.	185.00	2.40	444.00	Billable

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FIR002:Leonard Firth (continued)

Date ID	Attorney Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
11/13/2004 161966	Cook, Scott Legal Drafted declaration for Aaron Johnson. Telephone conference to Leonard Firth about declaration.	185.00	2.10	388.50	Billable
11/15/2004 161971	Cook, Scott Legal Conference with Joseph Ahmad regarding A. Johnson's declaration.	185.00	0.10	18.50	Billable
11/16/2004 161978	Cook, Scott Legal Revising declaration for A. Johnson. Telephone conference to L. Firth regarding damages, settlement, and A. Johnson's declaration.	185.00	1.40	259.00	Billable
11/17/2004 161980	Cook, Scott Legal Revising Johnson declaration. Telephone conference to L. Firth regarding health insurance and Johnson's declaration.	185.00	0.50	92.50	Billable
11/23/2004 162000	Cook, Scott Legal Telephone conference to A. Johnson regarding declaration. Editing declaration of A. Johnson.	185.00	0.80	148.00	Billable
11/24/2004 162002	Cook, Scott Legal Finalizing and sending out A. Johnson's declaration.	185.00	0.10	18.50	Billable
12/1/2004 163356	Cook, Scott Legal Reviewed Defendant's Request for Release of medical records. Conference with Gigi Cox regarding medical records.	185.00	0.30	55.50	Billable
12/2/2004 163358	Cook, Scott Legal Conference with Joseph Ahmad about Defendant's request for medical records. Telephone conference to Leonard Firth regarding medical records. Telephone conference to Jill Schein regarding same. Begin drafting confidentiality agreement.	185.00	1.10	203.50	Billable
12/14/2004 163391	Cook, Scott Legal Phone message with Jill Schein. Drafting confidentiality agreement regarding medical records.	185.00	0.70	129.50	Billable
12/16/2004 163403	Cook, Scott Legal Telephone conference with Jill Schein regarding medical records and possible settlement. Conference with J. Ahmad regarding same. Drafting of confidentiality agreement and letter to L. Firth.	185.00	1.00	185.00	Billable
12/17/2004 163408	Cook, Scott Legal Letters to L. Firth regarding medical records and confidentiality agreement.	185.00	0.40	74.00	Billable

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FIR002:Leonard Firth (continued)

Date ID	Attorney Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
12/20/2004 163415	Cook, Scott Legal Drafted letters to L. Firth regarding medical records and confidentiality agreement. Telephone conference with L. Firth regarding medical records and possible mediation.	185.00	0.60	111.00	Billable
1/6/2005 165226	Cook, Scott Legal Reviewed medical record release from Leonard Firth.	185.00	0.10	18.50	Billable
1/7/2005 165229	Cook, Scott Legal Telephone conference with L. Firth regarding medical records, confidentiality agreement and mediator. Telephone conference with Jill Schein regarding same. E-mail to Jill Schein regarding same.	185.00	0.60	111.00	Billable
1/24/2005 165305	Cook, Scott Legal Reviewed confidentiality agreement on medical records. Drafted letter to Defendant with medical record authorization.	185.00	0.30	55.50	Billable
1/26/2005 165314	Cook, Scott Legal Conference with G. Cox regarding need for expert testimony on damages.	185.00	0.20	37.00	Billable
2/23/2005 166632	Cook, Scott Legal Conference with Joseph Ahmad regarding case status and settlement progress.	185.00	0.20	37.00	Billable
3/17/2005 168888	Cook, Scott Legal Telephone conference with L. Firth regarding case status and summary judgment motion.	185.00	0.20	37.00	Billable
3/28/2005 168917	Cook, Scott Legal Received Rule 11 agreement from opposing counsel regarding discovery. reviewed document production regarding same.	185.00	0.20	37.00	Billable
3/29/2005 168925	Cook, Scott Legal Reviewed letter from Jill Schein regarding Defendant's discovery responses. Reviewed discovery attempting to reconcile Defendant's production. Reviewed file. Conference with Joseph Ahmad regarding production of declaration discovery and depositions by written questions. Conference with Gigi Cox regarding requesting records and production of declaration. Legal research on witness statements and depositions as written questions.	185.00	2.80	518.00	Billable
4/5/2005 169295	Cook, Scott Legal Telephone conference with J. Schein regarding expert designation; review of records obtained from Marker Group.	185.00	0.50	92.50	Billable



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FIR002:Leonard Firth (continued)

Date ID	Attorney Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
4/8/2005 169304	Cook, Scott Legal Review Defendant's Expert designations; conference with J. Ahmad regarding same; perform legal research on requirements of expert designations.	185.00	0.50	92.50	Billable
4/12/2005 169313	Cook, Scott Legal Telephone conference with Leonard Firth regarding case status, summary judgment, records of Don McGill and deposition of A. Johnson; conference with J. Ahmad regarding expert designations and deposition of A. Johnson; telephone message with Jill Schein regarding deposition of A. Johnson.	185.00	0.70	129.50	Billable
4/25/2005 169874	Cook, Scott Legal Letter to Jill Schein regarding deposition of Aaron Johnson; conference with Joe Ahmad regarding same.	185.00	0.30	55.50	Billable
5/19/2005 170978	Cook, Scott Legal Receipt and review of Defendant's request for Plaintiff's medical records; conference with G. Cox regarding same.	185.00	0.30	55.50	Billable
6/20/2005 172416	Cook, Scott Legal Reviewed case law on hours requirement of FMLA.	185.00	0.50	92.50	Billable
6/21/2005 172535	Cook, Scott Legal Legal research on Motion for Summary Judgment.	185.00	0.50	92.50	Billable
6/22/2005 172545	Cook, Scott Legal Legal research for Response to Motion for Summary Judgment.	185.00	0.10	18.50	Billable
6/23/2005 172552	Cook, Scott Legal Legal research for Response to Motion for Summary Judgment.	185.00	0.30	55.50	Billable
7/16/2005 173920	Cook, Scott Legal Telephone conference with L. Firth regarding response to Motion for Summary Judgment.	185.00	0.50	92.50	Billable
7/19/2005 173926	Cook, Scott Legal Work on response to Defendant's Motion for Summary Judgment.	185.00	5.20	962.00	Billable
7/20/2005 173933	Cook, Scott Legal Begin preparing Response to Defendant's Motion for Summary Judgment.	185.00	3.60	666.00	Billable

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FIR002:Leonard Firth (continued)

Date ID	Attorney Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
7/21/2005 173938	Cook, Scott Legal Meeting with L. Firth regarding time spent working; draft Response to Defendant's Motion for Summary Judgment.	185.00	8.80	1,628.00	Billable
7/22/2005 173945	Cook, Scott Legal Work on draft Response to Defendant's Motion for Summary Judgment.	185.00	6.20	1,147.00	Billable
7/23/2005 173946	Cook, Scott Legal Continue drafting Response to Defendant's Motion for Summary Judgment.	185.00	2.50	462.50	Billable
7/24/2005 173954	Cook, Scott Legal Telephone conference with L. Firth regarding hours worked; prepare Response to Defendant's Motion for Summary Judgment.	185.00	6.30	1,165.50	Billable
7/25/2005 173951	Cook, Scott Legal Legal research on travel time and compensation; Telephone conference with with L. Firth regarding time worked; conference with J. Ahmad regarding response to Summary Judgment Motion; draft Response to Defendant's Motion for Summary Judgment.	185.00	7.50	1,387.50	Billable
7/27/2005 174587	Cook, Scott Legal Draft Plaintiff's Response to Defendant's Motion for Summary Judgment; Telephone conferences with L. Firth regarding same; legal research regarding same.	185.00	12.70	2,349.50	Billable
7/28/2005 174595	Cook, Scott Legal Continue drafting Plaintiff's Response to Defendant's Motion for Summary Judgment; legal research regarding same; telephone conferences with L. Firth regarding same.	185.00	13.70	2,534.50	Billable
7/29/2005 174603	Cook, Scott Legal Finalized Plaintiff's Response to Defendant's Motion for Summary Judgment.	185.00	9.00	1,665.00	Billable
8/11/2005 175116	Cook, Scott Legal Conference with J. Ahmad regarding Summary Judgment Response; draft Sur-Reply to Defendant's Reply to Summary Judgment Response.	185.00	3.20	592.00	Billable
8/14/2005 175128	Cook, Scott Legal Draft Sur-Reply to Defendant's Reply to Plaintiff's Response to Defendant's Motion for Summary Judgment.	185.00	0.50	92.50	Billable
8/15/2005 175131	Cook, Scott Legal Draft Plaintiff's Sur-Reply to Defendant's Response to Plaintiff's Reply to Defendant's Motion for Summary Judgment; conference with J. Ahmad regarding same.	185.00	3.40	629.00	Billable

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FIR002:Leonard Firth (continued)

Date ID	Attorney Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
8/19/2005 175439	Cook, Scott Legal Drafting Sur-Reply to Defendant's Motion for Summary Judgment.	185.00	5.70	1,054.50	Billable
8/20/2005 175443	Cook, Scott Legal Drafting Sur-Reply to Defendant's Motion for Summary Judgment.	185.00	1.60	296.00	Billable
8/21/2005 175449	Cook, Scott Legal Finalize Sur-Reply to Defendant's Motion for Summary Judgment.	185.00	2.40	444.00	Billable
8/22/2005 175453	Cook, Scott Legal Reviewed final draft of Sur-Reply to Defendant's Motion for Summary Judgment.	185.00	0.50	92.50	Billable
Total: Cook, Scott			150.70		\$27,879.50
<u>Attorney: Cox, Gigi</u>					
2/9/2004 182756	Cox, Gigi Legal Draft and revise complaint. Send to client for comment and revisions.	125.00	2.60	325.00	Billable
2/17/2004 182757	Cox, Gigi Legal Revise and finalize complaint. Prepare civil cover sheet and summons. Request filing fee check.	125.00	1.80	225.00	Billable
2/20/2004 182758	Cox, Gigi Legal Prepare filing letter and file Complaint.	125.00	0.80	100.00	Billable
2/23/2004 182759	Cox, Gigi Legal Review court assignment. Calendar initial scheduling conference.	125.00	0.30	37.50	Billable
3/30/2004 182760	Cox, Gigi Legal Prepare, file and serve Plaintiff's Certificate of Interested Persons.	125.00	0.40	50.00	Billable
5/17/2004 182761	Cox, Gigi Legal Draft First Amended Complaint.	125.00	0.20	25.00	Billable
5/20/2004 182762	Cox, Gigi Legal Finalize, file and serve ( 1) Plaintiff's Response to Defendant's Motion to Dismiss; ( 2) Unopposed Motion for Leave to File Plaintiff's First Amended Complaint and; ( 3) Plaintiff's First Amended Complaint.	125.00	1.20	150.00	Billable

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FIR002:Leonard Firth (continued)

Date ID	Attorney Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
5/28/2004 182763	Cox, Gigi Legal Meeting with client regarding documents and witnesses.	125.00	0.20	25.00	Billable
6/2/2004 182764	Cox, Gigi Legal Telephone conference with client regarding information on Michael Rees and Aaron Johnson.	125.00	0.10	12.50	Billable
6/7/2004 182765	Cox, Gigi Legal Draft Joint Case Management Plan. Discuss with Joe Ahmad and send to Defendant.	125.00	0.40	50.00	Billable
6/8/2004 182766	Cox, Gigi Legal Finalize, file and serve Joint Case Management Plan.	125.00	0.50	62.50	Billable
8/9/2004 182767	Cox, Gigi Legal Review file and draft Initial Disclosures. Discuss deposition dates with opposing counsel, Jill Schein.	125.00	1.10	137.50	Billable
8/10/2004 182768	Cox, Gigi Legal Draft Interrogatories and Requests for Production to Defendant.	125.00	2.00	250.00	Billable
8/11/2004 182769	Cox, Gigi Legal Revise, finalize, file, and serve Plaintiff's Initial Disclosures. Finalize and serve Plaintiff's Interrogatories and Requests for Production to Defendant.	125.00	3.50	437.50	Billable
9/21/2004 182770	Cox, Gigi Legal Prepare and serve deposition notices for McGill and Pickett. Arrange for court reporter.	125.00	0.60	75.00	Billable
9/22/2004 182771	Cox, Gigi Legal Draft Plaintiff's discovery responses.	125.00	1.50	187.50	Billable
9/27/2004 182772	Cox, Gigi Legal Revise, finalize and serve Plaintiff's Responses to Defendant's Interrogatories and Requests for Production.	125.00	4.30	537.50	Billable
9/29/2004 182774	Cox, Gigi Legal Revise, finalize, file and serve Motion for R. Scott Cook to appear Pro Hac Vice. Assist R.S. Cook in revising and serving Plaintiff's Amended Answers to Interrogatories. Meet with Firth for deposition preparation.	125.00	3.10	387.50	Billable
10/1/2004 182773	Cox, Gigi Legal Bates label documents for production. Draft Requests for Admissions to Defendant and Bates label the attached exhibits. Finalize and serve documents and Requests for Admissions. Assist R. Scott Cook with final items for Plaintiff's deposition.	125.00	2.20	275.00	Billable

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FIR002:Leonard Firth (continued)

Date ID	Attorney Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
10/18/2004 182775	Cox, Gigi Legal Telephone conference with Jill Schein about Requests for Admissions. Relay to S. Cook for handling.	125.00	0.20	25.00	Billable
1/31/2005 182776	Cox, Gigi Legal Finalize, file and serve Plaintiff's Expert Witness Designation.	125.00	0.90	112.50	Billable
3/30/2005 182777	Cox, Gigi Legal Request copies of records from Charter One and Continental Airlines for Markers.	125.00	0.20	25.00	Billable
6/21/2005 182778	Cox, Gigi Legal Brief review of Motion for Summary Judgment, copies to attorneys and client. Calendar response due date.	125.00	0.40	50.00	Billable
6/23/2005 182779	Cox, Gigi Legal Draft, finalize, file, and serve Plaintiff's Motion for Extension of due date for filing Plaintiff's Response to Defendant's Motion for Summary Judgment.	125.00	1.10	137.50	Billable
6/27/2005 182780	Cox, Gigi Legal Calendar new due date for Response to Motion for Summary Judgment.	125.00	0.10	12.50	Billable
10/27/2005 182781	Cox, Gigi Legal Review Order Denying Motion for Summary Judgment. Copy to client. Review file.	125.00	0.40	50.00	Billable
11/2/2005 182783	Cox, Gigi Legal Draft and revise Joint Motion to extend filing date of Joint Pretrial Order. Discuss with Defendant.	125.00	0.50	62.50	Billable
11/3/2005 182785	Cox, Gigi Legal Finalize, file, and serve Joint Motion for Extension of Time for filing Joint Pretrial Order.	125.00	0.70	87.50	Billable
11/8/2005 182786	Cox, Gigi Legal Calendar new due date for Joint Pretrial Order.	125.00	0.10	12.50	Billable
11/10/2005 182787	Cox, Gigi Legal Review file. Work on exhibit list.	125.00	1.00	125.00	Billable
11/14/2005 182788	Cox, Gigi Legal Draft Joint Pretrial Order and attachments.	125.00	3.50	437.50	Billable

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FIR002:Leonard Firth (continued)

Date ID	Attorney Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
11/16/2005 182789	Cox, Gigi Legal Revise and continue to work on Joint Pretrial Order and attachments. Send draft to Defendant. Discuss mediation dates.	125.00	2.70	337.50	Billable
11/17/2005 182790	Cox, Gigi Legal Revise and continue to work on Joint Pretrial Order and attachments. Send revised draft Joint Pretrial Order and jury charge to Defendant.	125.00	4.00	500.00	Billable
11/18/2005 182791	Cox, Gigi Legal Revise, finalize, file, and serve Joint Pretrial Order filed (Plaintiff's witness list, exhibit list, voir dire, Motion in Limine, jury charge). Discuss revisions with Defendant. Mediation dates proposed.	125.00	6.30	787.50	Billable
11/21/2005 182792	Cox, Gigi Legal Confirm mediation date and send information to Sandage. Hand deliver Joint Pretrial Order to Defendant.	125.00	0.40	50.00	Billable
11/29/2005 182793	Cox, Gigi Legal Draft, revise, finalize, file, and serve Joint Motion to Continue Docket Call. Telephone conference with Court about moving docket call. Discuss motion with Defendant.	125.00	1.10	137.50	Billable
12/1/2005 182794	Cox, Gigi Legal Notify Defendant that Docket Call reset per Amy with Court.	125.00	0.10	12.50	Billable
12/20/2005 182795	Cox, Gigi Legal Gather information for J. Ahmad for mediation with Doug Sandage on 12/21/05. Confirm arrangements with client.	125.00	0.80	100.00	Billable
1/6/2006 182796	Cox, Gigi Legal Telephone call to client to notify him of trial setting and general planning. Discussions with J. Ahmad about trial and scheduling. Review file.	125.00	1.40	175.00	Billable
1/8/2006 182797	Cox, Gigi Legal Trial preparation. Confirm trial setting on PACER. Prepare trial subpoenas. Discuss schedule with J. Ahmad.	125.00	2.50	312.50	Billable
1/9/2006 182800	Cox, Gigi Legal Arrange for service of trial subpoenas for McGill, Pickett and Johnson. Meet with J. Ahmad and L. Firth for trial preparation. Telephone conference with Ellen Alexander with Judge Hittner's court about scheduling. Work on trial notebooks and exhibits.	125.00	6.00	750.00	Billable
1/10/2006 182801	Cox, Gigi Legal Trial preparation: Finalize Plaintiff's exhibits and prepare Plaintiff's exhibit binders. Compare	125.00	10.50	1,312.50	Billable



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FIR002:Leonard Firth (continued)

Date ID	Attorney Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
	Plaintiff's exhibits to Defendant's exhibits for duplications. Revise and finalize trial notebooks and witness notebooks for J. Ahmad and Howard Dulmage. Organize file for trial.				
1/11/2006 182802	Cox, Gigi Legal	125.00	12.20	1,525.00	Billable
	Revise, finalize, file and serve Plaintiff's Response in Opposition to Defendant's Motion in Limine (2 motions), Plaintiff's Amended Motion in Limine, Plaintiff's second Exhibit List, Notice of Appearance of John Zavitsanos and H. Dulmage. Attend pretrial conference. Prepare for trial.				
1/12/2006 182803	Cox, Gigi Legal	125.00	11.00	1,375.00	Billable
	Attend trial - jury selection, opening statement and testimony of D. McGill and Julie Pickett. Confirm delivery of subpoena to Johnson. Issue subpoena for Stewart. Confirm service of subpoena on Johnson. Assist J. Ahmad and H. Dulmage in preparing for next day's testimony. Maintain organization of trial documents.				
1/13/2006 182804	Cox, Gigi Legal	125.00	10.50	1,312.50	Billable
	Attend trial - testimony of A. Johnson, M. Rees and Darryl Stewart. Work on subpoena service for Stewart. Assist J. Ahmad and H. Dulmage in preparing for Firth's testimony and maintain organization of trial documents.				
1/16/2006 182805	Cox, Gigi Legal	125.00	7.00	875.00	Billable
	Trial preparation - type tapes for J. Ahmad and arrange file. Pull documents for attorneys. Assist J. Ahmad and H. Dulmage.				
1/17/2006 182806	Cox, Gigi Legal	125.00	10.00	1,250.00	Billable
	Attend trial - testimony of Leonard Firth and McGill (recalled). Maintain organization of trial documents.				
1/18/2006 182807	Cox, Gigi Legal	125.00	8.00	1,000.00	Billable
	File and serve Plaintiff's proposed jury charge and questions. Assist J. Ahmad and H. Dulmage with jury charge conference. Revise jury instructions and questions. Send to Defendant for approval. Request excerpts of trial testimony from Court reporter.				
1/19/2006 182808	Cox, Gigi Legal	125.00	10.50	1,312.50	Billable
	Finalize and copy jury instructions. Hand deliver copies to Court. Attend trial - closing arguments. Wait for jury (3 jury questions including request for Stewart's testimony). Maintain organization of trial documents.				
1/20/2006 182809	Cox, Gigi Legal	125.00	8.00	1,000.00	Billable
	Attend trial -- wait in courtroom - verdict announcement, discussion with jurors. Clear out items from courtroom and transport back to office.				
Total: Cox, Gigi			148.90	\$18,612.50	

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FIR002:Leonard Firth (continued)

Date ID	Attorney Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
<u>Attorney: Leiker, Kelly</u>					
1/10/2006 182851	Leiker, Kelly Legal	95.00	5.00	475.00	Billable
	Trial Preparation. Coordinate scanning of exhibits. Multiple telephone conferences with Trial Solutions regarding equipment. Help Gigi Cox mark and copy exhibits for notebooks.				
1/11/2006 182852	Leiker, Kelly Legal	95.00	9.00	855.00	Billable
	Trial Preparation. Attend pre-trial conference. Continue to work with Sanction. Meeting with Trial Solutions at Courthouse regarding equipment set up.				
1/12/2006 182853	Leiker, Kelly Legal	95.00	12.00	1,140.00	Billable
	Prepare for and attend trial.				
1/13/2006 182854	Leiker, Kelly Legal	95.00	11.50	1,092.50	Billable
	Prepare for and attend trial.				
1/17/2006 182855	Leiker, Kelly Legal	95.00	12.60	1,197.00	Billable
	Prepare for and attend trial.				
1/19/2006 182856	Leiker, Kelly Legal	95.00	4.50	427.50	Billable
	Prepare for and attend trial.				
Total: Leiker, Kelly			54.60		\$5,187.00
<u>Attorney: McCart, April</u>					
4/5/2005 168955	McCart, April Legal	100.00	0.30	30.00	Billable
	Forward records from Continental and Charter One to client.				
Total: McCart, April			0.30		\$30.00
<u>Attorney: Thomas, Karen</u>					
1/17/2006 182415	Thomas, Karen Legal	50.00	0.30	15.00	Billable
	Copied documents.				
Total: Thomas, Karen			0.30		\$15.00
<u>Attorney: Young, Juslyn</u>					
7/27/2005 174814	Young, Juslyn Legal	100.00	0.83	83.33	Billable
	Edit chart per instructions from Scott to assist with response to Defendant's MSJ				

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FIR002:Leonard Firth (continued)

Date ID	Attorney Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
7/28/2005 174805	Young, Juslyn Legal Assist Scott with Motion for Summary Judgment Response preparation	100.00	4.83	483.33	Billable
7/29/2005 174799	Young, Juslyn Legal Assist Scott Cook with preparation of Response to Motion for Summary Judgment and filing; prepare copies; confirm and attach exhibits; proofread response	100.00	7.00	700.00	Billable
8/22/2005 176240	Young, Juslyn Legal Proofread sur-reply to defendant reply to plaintiff response to defendant Motion for Summary Judgment; prepare exhibits; electronically file sur reply and serve copies on defendant	100.00	1.33	133.33	Billable
Total: Young, Juslyn			13.99		\$1,399.99
<u>Attorney: Zavitsanos, John</u>					
1/12/2006 182860	Zavitsanos, John Legal Assisted with jury selection. Research for jury charge.	0.00	7.40	0.00	Billable
1/13/2006 182862	Zavitsanos, John Legal Continue research for jury charge. Review of C.F.R. to locate case law on presumption.	0.00	2.70	0.00	Billable
1/14/2006 182863	Zavitsanos, John Legal Assist Mr. Ahmad with witness preparation. Research for jury charge.	0.00	7.20	0.00	Billable
1/15/2006 182864	Zavitsanos, John Legal Research for jury charge.	0.00	2.10	0.00	Billable
TOTAL	Billable Fees		614.09		<u>\$130,425.49</u>